Factual and Procedural Statement

The Petitioners (brothers), male natives and citizens of Honduras, entered the United States at or near Laredo, Texas on or about September 21st, 2001. An immigration officer then paroled the petitioners after inspection.

On September 21st, 2001, a Notice to Appear was issued charging the petitioner's with being removable under Section 212(a) (6) (A) (i) of the Immigration and Nationality Act (hereinafter the "Act") as aliens present in the United States without being admitted or paroled or who arrived in the United States at a date, time or place other than designated by the Attorney General.

The petitioners, through counsel, admitted all of the allegations of facts contained in the Notices to Appear and conceded to the charges of removal as well.

Several continuances ensued and the petitioners submitted an application for asylum under Section 208 of the Act and also requested withholding of removal to Honduras under § 241(b) (3) and withholding of removal under the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter Convention Against Torture).

At a subsequent hearing, the petitioner's testified they would be harmed or killed if returned to Honduras due to their unwillingness to join the Maras. Administrative Record ("AR") 127.

The petitioner's credibility was unquestioned, except for a negligible inconsistency contained in the asylum application, which listed the younger petitioner as first coming to contact with the Maras in 1994 when in fact it had been in 1999. See AR 103, 119, 126, 127.

On September 16, 2003, the immigration judge denied the petitioner's application for asylum under Section 208 of the Act which and withholding of removal under the United Nations Convention Against Torture

(hereinafter "Convention Against Torture").

The Immigration Judge's decision specifically found there exists a gang problem in Honduras. AR 49. The gangs, are more commonly known known as "Maras," persecuted the petitioners due to their unwillingness to participate in criminal activity with them. AR 142.

The petitioners, through the undersigned counsel, filed a timely appeal to the Board of Immigration Appeals.

On June 1, 2004, the Board summarily affirmed the immigration judge's order denying the petitioner's applications for relief as well as the order of removal.

The petitioner filed a timely petition review with the United States Court of Appeals for the Eleventh Circuit. The parties briefed the matter and on May 10, 2005, the Eleventh Circuit Court of Appeals denied the Petitioners' petitions for review. The instant petition for writ of certiorari follows.

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Reason for Granting the Petition

The Eleventh Circuit Court of Appeals May 10, 2005 decision deviates from this Honorable Court's decision in *INS v. Cardoza Fonseca*, 480 US. 421(1987).

The Eleventh Circuit Court of Appeals May 10, 2005 decision upheld the immigration judge's finding that "there [exists] no basis on which [he could have] grant[ed] asylum" (AR 156.) when the record reflects the petitioners as being members of a "particular social group."

In order to be eligible for asylum under Section 208 of the Act an application must show that he is unable or unwilling to return to his home country because of persecution or a well founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or a political opinion. Section 101(a) (42) (B) of the Act, *See, INS v. Cardoza Fonseca*, 480 US. 421 (1987) and *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987). In order to be eligible for withholding of removal to any country, an applicant must show that his life or freedom will be threatened in that country on account of his race, religion, nationality, membership in a particular social group, or a political opinion. § 241 (b) (3) (A) of the Act. The statutory revision requires an individual to demonstrate a clear probability of persecution on account of one of the five enumerated grounds in the Act. See, *INS v. Stevic*, 460 U.S. 407 (1984). As well as withholding of deportation, an alien must demonstrate that it is more likely than not that he will be subject to persecution if returned to his native land, a most strenuous standard than that required to establish eligibility for asylum. In order to be eligible for withholding of removal under the Convention Against Torture (CAT), an applicant must prove that he would be tortured if he returns to his native country and that the act will be instigated by or with the consent or acquiescence of a public official or other person acting in an official capacity. See, 8 C.F.R. § 208.18(a) (1). An

applicant for withholding of removal under the Convention Against Torture bears the burden of proof that it is more likely than not that he would be tortured if removed to the proposed country of removal. See, 8 C.F.R. § 208.16(c) (2); 8 C.F.R. § 208.17(a).

A "particular social group," as used in statute providing for withholding of removal, is a group composed of individuals sharing common, immutable characteristic.

Pursuant to *Matter of Acosta*, 19 I.& N. Dec. 211, 233 (BIA 1985), the Board of Immigration Appeals interpreted the phrase persecution on account of membership in a particular social group to mean persecution that is directed toward an individual who is a member of a group of persons all of whom share a common, immutable characteristic.

The shared characteristic could be an innate one such as sex, color, kinship ties, or in some circumstances it may even be for certain beliefs they may possess.

In *Ananeh—Firempong v. INS*, 766 F.2d 621 (1st Cir. 1985), the Court of Appeals for the First Circuit discussed the meaning of a "particular social group."

The First Circuit Court of Appeals endorsed the following language in *Ananeh—Firempong* as being central to a determination of what constitutes a particular social group:

> "[S]ocial group persecution must be based on a 'characteristic that either is beyond the power of an individual to change or ***is so fundamental to individual identity or conscience that it ought not to be required to be changed***.'" *Id. at* 626 (emphasis added).

Recently the Ninth Circuit Court of Appeals followed the reasoning contained in *Ananeh—Firempong* and found that persecution that is directed toward an individual who is a member of a group of persons all of

whom share a common, immutable characteristic such as sex, color, or kinship ties, will only qualify under § 1101 when the common characteristic that defines the group is one that the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences. *Lin v. Ashcroft*, 377 F.3d 1014 (9th Cir. 2004).

The particular kind of group characteristic that will qualify under this construction remains to be determined on a case-by-case basis.

In essence, the persecutors (Maras) coerced the petitioners to go against their ingrained beliefs and participate in criminal conduct under threat of life and limb.

Uncontrovertibly, the petitioners were threatened on several occasions with harm and death for their failure to join such organization. Therefore the petitioners' asylum claim is substantiated.

Clearly, the petitioners are members of a particular social group and fear return to their country and believe that they will be persecuted and tortured upon their repatriation. AR 47.

To establish asylum eligibility based on political opinion or group membership, the alien must, with credible evidence, establish (1) past persecution on account of her political opinion or group membership, or (2) a "well-founded fear" that her political opinion or group membership will cause future persecution. 8 C.F.R. § 208.13(a), (b). An applicant must demonstrate that his or her fear of persecution is subjectively genuine and objectively reasonable.

An alien is entitled to withholding of removal under the INA if he/she can show that his/her "life or freedom would be threatened [on account of] race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1231(b)(3)(A).

The alien bears the burden of demonstrating that it is "more likely than not" she will be persecuted or

tortured upon being returned to her country. *Fahim v. United States AG*, 278 F.3d 1216, 1218 (11th Cir. 2002).

The petitioners are being persecuted for their unwillingness to participate in criminal activities due to their religious beliefs and upbringing. Because of their unwillingness to betray their trained consciences, the petitioners would suffer persecution upon their return to Honduras as Honduran citizens that refuse to join a criminal organization, the *Maras*. (AR 142).

Section 5 of the Honduras Country Reports on Human Rights Practices - 2003, Released by the Bureau of Democracy, Human Rights, and Labor February 25, 2004 states that:

> Abuse of youth and children in poor neighborhoods and in gangs is a serious problem. Both police and members of the general population engaged in violence against poor youth and children; some of these children were involved in criminal activities, but many were not. Police were found to be responsible for some of the killings of approximately 500 children, only some of whom lived on the street, who were killed summarily in "social cleansing" killings between January 1998 and August 2002.

In *Matter of Vigil*, 19 I&N 572 (BIA 1988), the Board specifically found that forcible recruitment of young males by a guerilla organization did not constitute persecution within the meaning of the Act due to the persecuting party's ***motive,*** more precisely, "the intent of the recruitment." *Id. at* 577.

It must be mentioned that during closing arguments of the petitioners' removal proceedings, the Office of the Chief Counsel for the Department of Homeland Security argued that the holding in *Vigil*

would preclude relief for the petitioners since in *Vigil* there was forcible recruitment of young males by a guerilla organization (AR 144) and under such instances, asylum or withholding of removal was not warranted.

The respondents in *Vigil* were being forced to join the guerilla forces in El Salvador, a pseudo political movement with members whose ideals are characteristic of persons seeking the betterment of the citizens of their country.

In other words, "the intent of the recruitment [was] not the persecution" in *Vigil*. In contradistinction to *Vigil*, the respondents in the instant case are being persecuted by the Maras for their ***unwillingness to join them in participating in violent and criminal acts*** due to their religious and conscientious upbringing. It would certainly go against the petitioners' trained "conscience" to join an organization that requires their members perform violent and criminal acts. The petitioners should not be forced to compromise their deep-rooted belief system in order to not be harmed.

The petitioners are unable to avoid the persecution by the "Maras." The petitioners should not be placed in a position in which they will be forced to commit acts that go against their religious upbringing and ideals. *Matter of Acosta*, 19 I. & N. Dec. 211, 234 (BIA , 1985). Persecution will occur "only when there is a difference between the persecutor's views or status and that of the victim: it is oppression which is inflicted on groups or individuals because of a difference that the persecutor will not tolerate." See *Matter of Maldonado-Cruz*, 19 I. & N. Dec. 509, 513 (BIA 1988); See also *Campos-Guardado v. INS*, 809 F.2d 285, 291 (5th Cir. 1987).

Finally, nothing in the administrative record negates the petitioners as being persons that uphold a law-abiding lifestyle, including the petitioners' membership in the Seventh Day Adventist, a religious group that promotes strict adherence to the laws of the nations. AR 49.

For this reason the respondents readily qualified for asylum under one of the enumerated grounds, "membership in a particular social group", i.e., Honduran citizens persecuted for their refusal to join a criminal organization, the *Maras*, due to their religious and conscientious upbringing (AR 142).

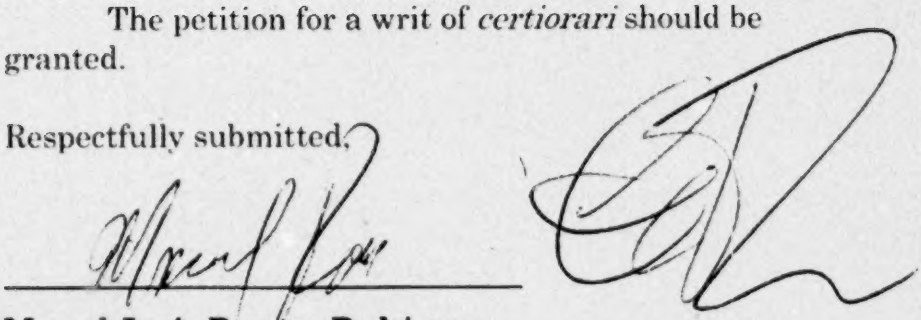
In light of the foregoing, the immigration judge mistakenly found that "there is no basis on which [he could] grant asylum." AR 156. The immigration judge could have granted petitioners asylum based upon the petitioners' membership in the previously mentioned particular social group, however, failed to do so.

The petitioners were entitled to withholding of removal due to their being members of a particular social group. The petitioner's procedural due process rights were violated when: (1) the immigration judge found he was unable to grant the petitioners withholding of removal; (2) the Board summarily affirmed the immigration judge's adverse decision; (3) and the Eleventh Circuit Court of Appeals dismissed the petition for review of the underlying administrative orders.

Conclusion

The petition for a writ of *certiorari* should be granted.

Respectfully submitted,



Maycol Jesús Romero-Rodriguez
and
Cesar Eliu Romero-Rodriguez, *pro se*
999 Ponce De Leon Blvd.
Suite 940
Coral Gables, FL 33134
Tel: (305) 446-8686
Fax: (305) 529-0445

Date: August 8, 2005

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APPENDIXES TO PETITION FOR WRIT OF CERTIORARI

A. The Eleventh Circuit Court of Appeal's order dismissing the petitioner's petition for review in Romero-Rodriguez, et al. v. U.S. Attorney General, Case No. 04-13230 (11th Cir. May 19, 2005).

B. The Executive Office of Immigration Review, Board of Immigration Appeal's, June 1, 2004 administrative decisions in In Re: Romero-Rodriguez, et al., (A79-044-246 & A79-044-247) (BIA June 1, 2004).

C. The Office of the Immigration Judge, Executive Office of Immigration Review's, September 16, 2003, Oral/Written Decision of removal entered in Matter of Maycol Jesus Romero-Rodriguez. (A79-044-247) (EOIR September 16, 2003 June 1, 2004).

D. The Office of the Immigration Judge, Executive Office of Immigration Review's, September 16, 2003, Oral/Written Decision of removal entered in Matter of Cesar Eliu Romero-Rodriguez, (A79-044-246) (EOIR September 16, 2003 June 1, 2004).

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(APPENDIX A)

(DO NOT PUBLISH)

("Filed U. S. Court of Appeals[,] Eleventh Circuit[,] May10, 2005[,] Thomas K. Khan[,] Clerk")

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 04-13230

Non-Argument Calendar

BIA Nos. A79-044-246 & A79-044-247

CESAR ELIU ROMERO-RODRIGUEZ,

MAYCOL JESUS ROMERO-RODRIGUEZ,

Petitioners,

versus

U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of an Order of the

Board of Immigration Appeals

(May 10, 2005)

Before BIRCH, HULL and WILSON, Circuit Judges.

PER CURIAM:

Through counsel, Cesar Eliu Romero-Rodriguez ("Cesar") and his brother, Maycol Jesus Romero-Rodriguez ("Maycol") (collectively "the petitioners"), petition for review of the Board of Immigration Appeal's ("BIA") final order, affirming, without opinion, the Immigration Judge's ("IJ") decision denying them asylum and withholding of removal under the Immigration and Nationality Act ("INA") and the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment ("CAT"). Because the petitioners removal proceedings were commenced after 1 April 1997, the permanent rules of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996), govern their petition for review. A review of the record does not compel the conclusion that the petitioners suffered past persecution or had a well-founded fear of future persecution and indicates that substantial evidence supports the IJ's finding that the petitioners failed to demonstrate their eligibility for asylum. Moreover, because the burden of proof for withholding of removal under the INA and the CAT is higher than that for asylum, the IJ also properly denied the petitioners withholding of removal. Accordingly, the petition for review is DENIED.

I. BACKGROUND

On or about 21 September 2001, the petitioners, natives and citizens of Honduras, entered the United States without being admitted or paroled. See R1 at 357, 445. That same day, the Immigration and Naturalization Service ("INS") served the petitioners with Notices to Appear in Removal Proceedings. At an initial hearing before an IJ, the petitioners, through counsel, conceded their removability, but indicated their intent to submit applications for asylum and withholding of removal under the INA and the CAT.

The IJ issued a decision with respect to each petitioner and made similar findings in both cases. The IJ found that the testimony of both petitioners was "generally" or "fairly consistent" with their asylum applications, with the exception that their applications stated that they first were recruited in 1994, while they testified that they first were approached by the gang in 1999. R1 at 24, 48. The IJ indicated, however, that he was concerned with the following: (1) Cesar stated that he came to the United States not only to avoid the pressure of joining a gang in Honduras, but also to support his wife; and (2) Maycol left Honduras only two days after the birth of his daughter, which suggests that he may have come to the United States for the purpose of acquiring employment to support his daughter. Next, the IJ stated that, given the Country Report and other documentation, he was

aware that Honduras had a problem with gangs and the lawlessness generated by their activities. The IJ found, however, that Cesar and Maycol failed to demonstrate that they had been persecuted or had a well-founded fear of future persecution on account of any of the five statutory grounds. Noting that, under Matter of Vigil, 19 I&N Dec. 572 (BIA 1988), the forced recruitment of young men by guerrilla organizations does not constitute persecution within the meaning of the INA, the IJ found that, similarly, the attempted recruitment of the petitioners by a gang involved exclusively in criminal activities did not constitute persecution.

Additionally, the IJ noted that, with respect to Cesar, although he asserted that he had been recruited on several occasions, he had never been harmed. In the decision regarding Maycol, the IJ stated that, because the Honduran government was attempting to control the lawlessness that exists in that country, he could not find that a reasonable person in the Maycol's situation would fear returning to Honduras on account of any of the five statutory grounds. R1 at 25, 49.Accordingly, the IJ found that the petitioners had failed to meet their burden for asylum. R1 at 26,.49.

The IJ then found that, since the petitioners failed to meet their burden for asylum, they could not meet the higher burden of proof required for withholding

of removal under the INA. Next, the IJ found that the petitioners failed to meet their burden for CAT relief since they had never been tortured, and there was no reason to believe that, upon their return to Honduras, they "would be tortured by the act or acquiescence or consent of an official or person acting in an official capacity." R1 at 26-50.

The petitioners appealed the IJ's decision, arguing that they had established that they were persecuted and had a well-founded fear of persecution on account of their membership in a particular social group. The BIA sent the petitioners a briefing scheduling, which stated that the petitioners had until 12 April 2004, to file a brief. After the deadline for filing briefs had passed, the petitioners submitted their brief, along with a motion to accept a late-filed brief, but the BIA denied the petitioners' motion. Thereafter, the BIA affirmed, without opinion, the IJ's decision.

II. DISCUSSION

On appeal, the petitioners argue that the IJ erred by denying their application for asylum and withholding of removal because they established that they suffered persecution, in the form of threats, on account of their membership in a social group. They identify their social group as "Honduran citizens persecuted for their refusal to join a criminal organization . . . due to their religious

and conscientious upbringing." Petitioners' brief at 14. The petitioners further assert that (1) due to "their unwillingness to betray their trained consciences," they would be persecuted if they returned to Honduras, and (2) they "should not be placed in a position in which they will be forced to commit acts that go against their religious upbringing." Id. at 12, 14.

We review the IJ's decision in this case, not the BIA's, because the BIA summarily affirmed the IJ's decision, thereby making that the final agency determination. See Sepulveda v. U.S. Attorney General, F.3d , (11th Cir. Mar. 2, 2005). To the extent that the IJ's decision was based on a legal determination, we review the IJ's decision de novo. Mohammed v. Ashcroft, 261 F.3d 1244, 1247-48 (11th Cir. 2001). We review the IJ's factual determinations under the substantial evidence standard and "must affirm the [IJ's] decision if it is supported by reasonable, substantial, and probative evidence on the record considered as a whole." Sepulveda, F.3d at (internal quotations and citation omitted). "Under this highly deferential standard of review, the IJ's decision can be reversed only if the evidence compels a reasonable fact finder to find otherwise." Id. at . (internal quotations and citation omitted).

An alien who arrives in, or is present in, the United States may apply for asylum. 8 U.S.C. § 1158(a)(1). The Attorney General has the discretion to grant

asylum if the alien meets the INA's definition of a "refugee." 8 U.S.C. § 1158(b)(1). A "refugee" is:

> [A]ny person who is outside any country of such person's nationality . . . and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

8 U.S.C. § 1101(a)(42)(A). The asylum applicant carries the burden of proving statutory "refugee" status. Najjar v. Ashcroft, 257 F.3d 1262, 1284 (11th Cir. 2001). If the applicant meets this burden, then the AG may exercise his discretion to grant the applicant asylum. Id. The BIA defines "membership in a particular social group" as persons who hold "an immutable characteristic" or common trait "such as sex, color, or kinship ties, or in some circumstances . . . shared past experience[s] such as former military leadership or land ownership." Matter of Acosta, 19 I & N Dec. 211, 233 (BIA 1985), overruled on other grounds by Matter of Mogharrabi, 19 I & N Dec. 439 (BIA 1987).

To establish asylum eligibility, the alien must, with specific and credible evidence, establish: (1) past persecution on account of a statutorily listed factor; or (2) a "well-founded fear" that the statutorily listed factor will cause future persecution. 8 C.F.R. § 208.13(a), (b); Najjar, 257 F.3d at 1287. A "well-founded

fear" of persecution may be established by showing (1) past persecution that creates a presumption of a "well-founded fear" of future persecution, (2) a reasonable possibility of personal persecution that cannot be avoided by relocating within the subject country, or (3) a pattern or practice in the subject country of persecuting members of a statutorily defined group of which the petitioner is a part. 8 C.F.R. § 208.13(b)(1), (2). "[T]he statute protects against persecution not only by government forces but also by nongovernmental groups that the government cannot control." Sotelo-Aquije v. Slattery, 17 F.3d 33, 37 (2nd Cir. 1994).

Neither the INA nor the regulations define "persecution." In Gonzalez v. Reno, 212 F.3d 1338, 1355 (11th Cir. 2000), however, the discussed other circuits' holdings that "persecution" is an "extreme concept," requiring more than "a few isolated incidents of verbal harassment or intimidation," or "[m]ere harassment." "[T]o be an act of persecution, the behavior . . . must threaten death, imprisonment, or the infliction of substantial harm or suffering." Sharif v. INS, 87 F.3d 932, 935 (7th Cir. 1996). "Threats alone generally do not constitute persecution; only rarely, when they are so immediate and menacing as to cause significant suffering or harm in themselves, do threats per se qualify as persecution." Vatulev v. Ashcroft, 354 F.3d 1207, 1210 (10th Cir. 2003).

If "an applicant is unable to meet the 'well-founded fear' standard for asylum, he is generally precluded from qualifying for either asylum or withholding of deportation." Najjar, 257 F.3d at 1292-93 (internal quotations and citations omitted). The burden of proof for an applicant for withholding of removal under the CAT, as with the applicant under the INA, is higher than the burden imposed on an asylum applicant. Id. at 1303.

Upon careful review of the record on appeal and upon consideration of the parties' briefs, we discern no reversible error.

III. CONCLUSION

Because a review of the record does not compel the conclusion that the petitioners suffered past persecution or had a well-founded fear of future persecution, substantial evidence supports the IJ's finding that the petitioners failed to demonstrate their eligibility for asylum. Moreover, because the burden of proof for withholding of removal under the INA and the CAT is higher than that for asylum, the IJ also properly denied the petitioners withholding of removal.

Accordingly, we deny the petition for review.

PETITION DENIED.

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(APPENDIX B)

("Department of Justice")
U.S. Department of Justice

(s e a l)

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk
5201 Leesburg Pike, Suite 1300
Falls Church, Virginia 22041

Name: ROMERO-RODRIGUEZ, CESAR ELIU
A79-044-246

Date of this notice: 06/01/2004

Enclosed is the copy of the Board's decision and order in the above-referenced case.

Sincerely,

(signed)

Frank Kirder
Acting Chief Clerk

Enclosure

Board Order includes 79 044 247.

Panel Members:
MOSCATO, ANTHONY C.

000360

U.S. Department of Justice
Decision of the Board of Immigration Appeals
Executive Office for Immigration Review
Falls Church, Virginia 22041

File: A79-044-247 - MIAMI
Date: JUN 01 2004

In re: ROMERO-RODRIGUEZ, MAYCOL JESUS

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Soto, Eduardo, Esquire

ON BEHALF OF DHS: d'Adesky, Philippe, Assistant Chief Counsel

ORDER:

PER CURIAM. The Board affirms, without opinion, the results of the decision below. The decision below is, therefore, the final agency determination. *See* 8 C.F.R. § 1003.1(e)(4).

(APPENDIX C)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
155 South Miami Avenue Miami, Florida
File A 79 044 247 September 16, 2003
In the Matter of
MAYCOL JESUS ROMERO-RODRIGUEZ,
IN REMOVAL PROCEEDINGS
Respondent
CHARGE:
Section 212(a) (6) (A) (i) of the Immigration and Nationality Act - alien present in the United States without being admitted or paroled or who arrived in the United States at a date, time or place other than designated by the Attorney General.
APPLICATIONS:
Asylum under Section 208 of the Immigration and Nationality Act; withholding of removal under section 241(b)(3); withholding of removal under the Convention Against Torture.
ON BEHALF OF RESPONDENT: Edward F. Smith, Jr., Esquire
ON BEHALF OF THE DEPARTMENT OF HOMELAND SECURITY: Lori Tashman, Esquire

ORAL DECISION OF THE IMMIGRATION JUDGE

I. STATEMENTS OF FACTS

The respondent is an 18-year-old, unmarried native and citizen of Honduras who entered the United States with his brother, Cesar Eliu Romero-Rodriguez, at or near Laredo, Texas, on or about September 21st, 2001. He was not then admitted or paroled after inspection by an Immigration Officer.

JAN 20 2004
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On September 21st, 2001, a Notice to Appear was issued charging the respondent with removal under Section 212(a) (6) (A) (i) of the Immigration and Nationality Act (hereinafter the Act) See, Exhibit 1(A).

At a prior hearing before the Court, the respondent, through counsel, admitted all the allegations of fact and conceded the charge of removal contained on the Notice to Appear. Based on the admissions and the concession of the respondent, the charge of removal has been proven by clear and convincing and unequivocal evidence. See, Woodby v. INS, 385 U.S. 276 (1966); 8 C.F.R. Section 248(a).

Respondent has submitted an application for asylum under Section 208 of the Act which is also a request for withholding of removal, to Honduras, under Section 241(b) (3) See, Exhibit 3(A), which is also an application for withholding of removal under the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter Convention Against Torture). See, Exhibit 3(A). Pursuant to 8 C.F.R. Section 208.11, copy of the application for asylum was submitted to the Department of State Bureau of Democracy and Human Rights Labor for an advisory opinion. See, Exhibit 4(A).

The record also consisted of the frivolous asylum warnings, which were read to the respondent, given to the respondent in person (see, exhibit 2), together with background information relating to the presence of criminal gangs in

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Honduras (see, Exhibit 3(A)), together with the 2002 Honduras Country Report on Human Rights Practices (see, Exhibit 5).

The respondent and his brother, Cesar Eliu Romero Rodriguez have both testified in the support of the application for asylum, withholding of removal filed by the respondent.

II. STATEMENT OF THE LAW

In order to be eligible for asylum under Section 208 of the Act an application must show that he is unable or unwilling to return to his home country because of persecution or a well founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or a political opinion. Section 101 (a) (42) (B) of the Act, See, INS v. Cardoza Fonseca, 480 U.S. 421 (1987) and Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987). The Board of Immigration Appeals (indiscernible) standards to determine whether the fear of persecution is well-founded.

In order to be eligible for withholding of removal to any country, an applicant must show that his life or freedom will be threatened in that country on account of his race, religion, nationality, membership in a particular social group, or a political opinion. Section 241 (b) (3) (A) of the Act. The statutory revision requires an individual to demonstrate a clear probability of persecution on account of one of the five enumerated grounds in the Act. See, INS v. Stevic, 460 U.S. 407(1984). As well as withholding of deportation, an alien must

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demonstrate that it is more likely than not that he will be subject to persecution if returned to his native land, a most strenuous standard than that required to establish eligibility for asylum.

In order to be eligible for withholding of removal under the Convention Against Torture, an applicant must prove that he would be tortured if he returns to his native country and that the act will be instigated by or with the consent or acquiescence of a public official or other person acting in an official capacity. See, 8 C.F.R. Section 208.18 (a) (1). An applicant for withholding of removal under the Convention Against Torture bares the burden of proof that it is more likely than not that he would be tortured if removed to the proposed country of removal. See, 8 C.F R. Section 208.16(c)(2); 8 C.F.R. Section 208.17(a).

III. STATEMENT OF TESTIMONY

Mr. Maycol Jesus Romero-Rodriguez was the first witness to testify in support of the application for asylum and for withholding of removal. He stated he was born December 31st, 1984. He has one child, a daughter, born on August 1st, 2001, in Honduras. The child resides with her mother in Honduras at the present time. Mr. Romero-Rodriguez further stated that he left Honduras because he felt his life was in danger as a result of gangs which are present in Honduras. He said that these gangs are "Maras" who force young people to join and to commit crimes

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in Honduras and that the individuals first approached him and tried to recruit him into a gang in 1999. He said that they were harassing him and his brother, Cesar Eliu Romero-Rodriguez, and wanted them to commit robberies. Respondent also stated that they are also known to tatoo their bodies.

When they first recruited, Mr. Maycol Romero-Rodriguez stated that he was 14 or 15 years of age and they approached him about 30 times. He said that in August of 2001 he was encountered by individuals and was told that he should join or else they would ransack his home. He said they put a lot of pressure on him and his brother. Mr. Romero-Rodriguez further stated that he left Honduras because he felt his life was in danger. He said that gangs are all over Honduras. He said if he returned, they would know that he returned and he would be in danger.

Mr. Romero-Rodriguez further stated that on one occasion he witnessed two gangs fighting, some guns were used. He says he has never been involved in a criminal activity. He doesn't know what will happen to him if he returns and said that he was afraid to do so.

Mr. Romero-Rodriguez further stated that the gangs recruit young men who are 14 to 17 years of age or older and said even being as old as 50 years of age could be recruited. In contrary to his application for asylum, the respondent stated that he was not actually recruited in 1994. He continued to

attend high school in 1999 until 2001. Mr. Romero-Rodriguez further stated that he left Honduras two days after his daughter was born. He said that the last incident occurred 10 to 15 days before his child was born.

Mr. Romero-Rodriguez stated that he left Honduras on August 23rd, 2001. He went through Guatemala and Mexico and said he was permitted to travel through Guatemala because he has a permit to do so. He also said that he had applied for a visitor's visa in November of 1999 with the United States Embassy. He said that he had intended to travel to the United States even before the incidents occurred in which he said that he was pressured to join the gangs. He said that his mother came to the United States before him and his brother, after the hurricane struck Honduras. He stated finally that his reason for
coming to the United states was to (indiscernible) to help his child.

The next witness to testify was Cesar Eliu Romero Rodriguez, who said he was born January 25th, 1978, in Progreso, Honduras. He left on August 23rd, 2001, with his brother, Maycol Romero-Rodriguez, and entered the United States on September 21st, 2001, since has not departed the United States. He also stated that he has two other siblings. Mr. Romero-Rodriguez stated that he is married to Gladys Lizeth. He was married in Honduras January 23rd, 1998. He said his mother is in Miami, Florida, at the present time. His father is in Progreso,

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Honduras. He said his wife is in Honduras. He said his mother had been granted temporary protected status in the United States.

Mr. Cesar Romero-Rodriguez stated that he carne to the United States because gangs in Honduras were harassing him and his brother, Maycol Romero-Rodriguez, to join their group. He said he has not suffered any mistreatment. He indicated that they left Honduras and carne to the United States in order to avoid the psychological pressure that they had had to join these groups. He said that he's been approached 30 to 40 times. He said that he was with his brother on at least 10 occasions when he was approached. He said that these individuals identify themselves with tatoos. He said that they began pressuring him as early as 1995. He said that if you resist them, they can kill you. He said that the gang problem in Honduras exist throughout the country. He said they can find you even if you decide to move to a different area of the country.

Mr. Romero-Rodriguez further stated that he decided to leave Honduras because the pressure was building up in July of 2001, that they told him that he will join and begin to commit robberies, or that they will kill him. He said that there was more than one group. He said that when he told his father, his father said that he and his brother, Maycol, should leave the country. He said that his brother was also pressured to join.

Mr. Romero-Rodriguez stated that neither he nor his brother as ever been arrested. He fears returning because of the

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confrontations he has had with gang members and does not know what will happen to him. If he joins one of the gangs, "Maras" he'd go to prison. He was first asked to join when he was 21 years of age. He hasn't reported the incidents to the police.

Mr. Romero-Rodriguez further stated that he was employed in an electrical supply company as early as the year 2000.He said that his application for asylum was incorrect when it states that the first contact that he's had with gangs started in 1994. He said that his father is employed as a chauffeur.

Mr. Romero-Rodriguez further stated that the tattoos that the gang members put on their bodies are a symbol of their membership. He said he wanted to go to a university.

He said his wife came to the United States in 1998.

Mr. Cesar Romero-Rodriguez further stated that he's never been in any kind of a group or an organization. He said that he is a member of the Seventh Day Adventist religious sect. He has not (indiscernible) any political opinions. He has never suffered any mistreatment. He believes that the gangs would find him if he returned to Honduras.

IV. FINDINGS OF THE COURT

The Court has listen carefully to the testimony of the respondent and finds that it is fairly consistent with his application for asylum with the exception of his application for asylum reflecting that he was first approached in 1994 by a gang. The Court is most concerned about the fact that the respondent

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departed Honduras just two days after the birth of his child. The respondent indicates that, that is mere coincidence because he was approached for the last time about two weeks before his departure from Honduras, but the Court is no less concerned that the respondent may be present in the United States for the purpose of acquiring employment in order to further support his child in Honduras.

Nonetheless, the respondent has stated that his purpose in coming to the United States is to avoid criminal gangs in Honduras. He stated that they exist throughout the country and in reviewing the Country Report and the documentation provided by the respondent, the Court is mindful that a problem with gangs and general lawlessness does exist. However, the Court also notes that it appears that there is a degree of vigilantism as also reported by the State Department. In fact, according to the state Department, vigilantes are beginning to take retribution or suspected gang members and a number of deaths of suspected gang members have arisen as a result.

Nevertheless, it is apparent that a problem with gangs and the lawlessness generated by their activities does continue to exist in Honduras. The Court, however, does not find that the respondent in this case has demonstrated that he has suffered past persecution or has a well-founded fear of future persecution on account of any of the five statutory grounds as a result of any encounter that he has had with purported gang members. The

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Court notes that the Board of Immigration Appeals has stated in Matter of Viqil, 19 I&N Dec. 572 (BIA 1988), that the forced recruitment of young males by guerrilla' organizations does not constitute persecution within the meaning of the Act. Similarly, the attempted recruitment of the respondent by a gang which is involved solely in criminal activities, does not constitute persecution to entitle one to asylum under the law. While the respondent's concern is certainly understandable, it appears that the government is making some attempts to control the lawlessness in Honduras and the Court cannot find that a reasonable person in the respondent's situation would fear to returning to Honduras on account of any of the five statutory grounds.

Accordingly, the Court finds that the respondent has failed to meet his burden of proof required for the grant of asylum under Section 208 of the Act, and as he has failed to meet the lower burden of proof required for asylum, it would also, follow that he has failed to establish that it is more likely than not that his life or freedom would be threatened in Honduras on account of any of the five statutory grounds and that the respondent has failed to meet his burden of proof required for the grant of withholding of removal under Section 241(b) (3) of the Act.

Finally, the Court finds the respondent has failed to meet his burden of proof required for the grant of withholding of removal under the Convention Against Torture. He has never been

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tortured and there is no reason to believe that he would be tortured by the act or acquiescence of consent of an official person acting in an official capacity if returned to Honduras the future.

V. CONCLUSION

Based on the above, the Court concludes that the respondent has failed to meet his burden of proof required for the grant of asylum under Section 208 of the Act, withholding removal under Section 241(b) (3) of the Act and withholding of removal under the Convention Against Torture. The Court has designated Honduras as the country of removal for the respondent's removal, should it be required, in the alternative, he has neither requested nor demonstrated eligibility for any other form of relief from removal. Accordingly, the following Order will be entered:

ORDER

IT IS HEREBY ORDERED that the respondent's applicant for asylum under Section 208 of the Act be denied:

IT IS FURTHER ORDERED that the respondent's application for withholding of removal to Honduras under Section 241(b) (3) of the Act be denied:

IT IS FURTHER ORDERED that the respondent's application for withholding of removal to Honduras under the Convention Against Torture be denied:

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IT IS FURTHER ORDERED that the respondent be removed from the United States to Honduras on the charge contained in the Notice to Appear.

(signed)

RONALD G. SONOM

Immigration Judge

A 79 044 247 12 September 16, 2003

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(APPENDIX D)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
155 South Miami Avenue Miami, Florida
File A 79 044 246 September 16, 2003

In the Matter of

CESAR ELIU ROMERO-RODRIGUEZ,
IN REMOVAL PROCEEDINGS
Respondent
CHARGE:
Section 212(a) (6) (A) (i) of the Immigration and Nationality Act - alien present in the United States without being admitted or paroled or who arrived in the United States at a date, time or place other than designated by the Attorney General.
APPLICATIONS:
Asylum under Section 208 of the Immigration and Nationality Act; withholding of removal under section 241(b)(3); withholding of removal under the Convention Against Torture.
ON BEHALF OF RESPONDENT: Edward F. Smith, Jr., Esquire
ON BEHALF OF THE DEPARTMENT OF HOMELAND SECURITY: Lori Tashman, Esquire

ORAL DECISION OF THE IMMIGRATION JUDGE

III. STATEMENTS OF FACTS

The respondent is a 25-year-old, married native and citizen of Honduras who entered the United States at or near Laredo, Texas, on or about September 21st, 2001, with his brother, Maycol Jesus Romero-Rodriguez. He was not then admitted or paroled after inspection by an Immigration Officer.

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On September 21st, 2001, a Notice to Appear was issued charging the respondent with removal under Section212 (a) (6) (A) (i) of the Immigration and Nationality Act (hereinafter the Act) . See, Exhibit 1(B). The respondent, through counsel, admitted all of the allegations of fact and conceded the charge of removal contained on the Notice to Appear. Based on the admissions and the concession of the respondent, the charge of removal has been proven by clear, convincing and unequivocal evidence. See, Woodby v. INS, 385 U.S. 276 (1966); 8 C.F.R. Section 240.8(a).

Respondent submitted an application for asylum under Section 208 of the Act which is also a request for withholding of removal to Honduras under Section 241(b) (3) and withholding of removal under the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter Convention Against Torture). See, Exhibit 3 (B). Pursuant to 8 C.F.R. Section 208.11, a copy of the application for asylum was submitted to the Department of State Bureau of Democracy Human Rights and Labor for an advisory opinion (see, Exhibit 4(B)). No advisory opinion has been received. The Court has been provided with the 2002 Honduras Country Report on Human Rights Practices prepared by the Department of State (See, Exhibit 5).

The record also consists of the frivolous asylum warnings, which were read to the respondent, given to the

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respondent in person (see, Exhibit 2) together with background information relating to the problem of gangs and lawlessness in Honduras(see, Exhibit 3(B)).

The respondent' has testified in support of his application for asylum and for withholding of removal. He has also provided the testimony of his brother, Maycol Jesus Romero Rodriguez.

II. STATEMENT OF THE LAW

In order to be eligible for asylum under Section 208 of the Act an application must show that he is unable or unwilling to return to his home country because of persecution or a well founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or a political opinion. Section 101(a) (42) (B) of the Act. See, INS v. Cardoza Fonseca, 480 U.S. 421 (1987) and Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987). The Board of Immigration Appeals (indiscernible) standards to determine whether the fear of persecution is well-founded.

In order to be eligible for withholding of removal to any country, an applicant must show that his life or freedom will be threatened in that country on account of his race, religion, nationality, membership in a particular social group, or a political opinion. Section 241 (b) (3) (A) of the Act. The statutory revision requires an individual to demonstrate a clear probability of persecution on account of one of the five

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enumerated grounds in the Act. See, INS v. Stevie, 460 U.S. 407 (1984). As well as withholding of deportation, an alien must demonstrate that it is more likely than not that he will be subject to persecution if returned to his native land, a most strenuous standard than that required to establish eligibility for asylum.

In order to be eligible for withholding of removal under the Convention Against Torture, an applicant must prove that he would be tortured if he returns to his native country and that the act will be instigated by or with the consent or acquiescence of a public official or other person acting in an official capacity. See, 8 C.F.R. Section 208.18 (a) (1). An applicant for withholding of removal under the Convention Against Torture bares the burden of proof that it is more likely than not that he would be tortured if removed to the proposed country of removal. See, 8 C.F.R. Section 208.16(c) (2); 8 C.F.R. Section 208.17(a).

III. STATEMENT OF TESTIMONY

Mr. Maycol Jesus Romero-Rodriguez was the first witness to testify in support of the application for asylum and for withholding of removal. He stated he was born December 31st, 1984. He has one child, a daughter, born on August 1st, 2001, in Honduras. The child resides with her mother in Honduras at the present time. Mr. Romero-Rodriguez further stated that he left Honduras because he felt his life was in danger as a result of

gangs which are present in Honduras. He said that these gangs are "Maras" who force young people to join and to commit crimes in Honduras and that the individuals first approached him and tried to recruit him into a gang in 1999. He said that they were harassing him and his brother, Cesar Eliu Romero-Rodriguez, and wanted them to commit robberies. Respondent also stated that they are also known to tatoo their bodies.

When they first recruited, Mr. Maycol Romero-Rodriguez stated that he was 14 or 15 years of age and they approached him about 30 times. He said that in August of 2001 he was encountered by individuals and was told that he should join or else they would ransack his home. He said they put a lot of pressure on him and his brother. Mr. Romero-Rodriguez further stated that he left Honduras because he felt his life was in danger. He said that gangs are allover Honduras. He said if he returned, they would know that he returned and he would be in danger.

Mr. Romero-Rodriguez further stated that on one occasion he witnessed two gangs fighting, some guns were used. He says he has never been involved in a criminal activity. He doesn't know what will happen to him if he returns and said that he was afraid to do so.

Mr. Romero-Rodriguez further stated that the gangs recruit young men who are 14 to 17 years of age or older and said even being as old as 50 years of age could be recruited. In

contrary to his application for asylum, the respondent stated that he was not actually recruited in 1994. He continued to attend high school in 1999 until 2001. Mr. Romero-Rodriguez further stated that he left Honduras two days after his daughter was born. He said that the last incident occurred 10 to 15 days before his child was born.

Mr. Romero-Rodriguez stated that he left Honduras on August 23rd, 2001. He went through Guatemala and Mexico and said he was permitted to travel through Guatemala because he has a permit to do so. He also said that he had applied for a visitor's visa in November of 1999 with the United States Embassy. He said that he had intended to travel to the United States even before the incidents occurred in which he said that he was pressured to join the gangs. He said that his mother came to the United States before him and his brother, after the hurricane struck Honduras. He stated finally that his reason for coming to the United States was to (indiscernible) to help his child.

The next witness to testify was Cesar Eliu Romero Rodriguez, who said he was born January 25th, 1978, in Progreso, Honduras. He left on August 23rd, 2001, with his brother, Maycol Romero-Rodriguez, and entered the United States on September 21st, 2001, since has not departed the United States. He also stated that he has two other siblings. Mr. Romero-Rodriguez stated that he is married to Gladys Lizeth. He was married in

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Honduras January 23rd, 1998. He said his mother is in Miami, Florida, at the present time. His father is in Progreso, Honduras. He said his wife is in Honduras. He said his mother had been granted temporary protected status in the United States.

Mr. Cesar Romero-Rodriguez stated that he came to the United States because gangs in Honduras were harassing him and his brother, Maycol Romero-Rodriguez, to join their group. He said he has not suffered any mistreatment. He indicated that they left Honduras and came to the United States in order to avoid the psychological pressure that they had had to join these groups. He said that he's been approached 30 to 40 times. He said that he was with his brother on at least 10 occasions when he was approached. He said that these individuals identify themselves with tatoos. He said that they began pressuring him as early as 1995. He said that if you resist them, they can kill you. He said that the gang problem in Honduras exist throughout the country. He said they can find you even if you decide to move to a different area of the country.

Mr. Romero-Rodriguez further stated that he decided to leave Honduras because the pressure was building up in July of 2001, that they told him that he will join and begin to commit robberies, or that they will kill him. He said that there was more than one group. He said that when he told his father, his father said that he and his brother, Maycol, should leave the country. He said that his brother was also pressured to join.

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Mr. Romero-Rodriguez stated that neither he nor his brother as ever been arrested. He fears returning because of the confrontations he has had with gang members and does not know what will happen to him. If he joins one of the gangs, "Maras," he'd go to prison. He was first asked to join when he was 21 years of age. He hasn't reported the incidents to the police.

Mr. Romero-Rodriguez further stated that he was employed in an electrical supply company as early as the year 2000. He said that his application for asylum was incorrect when it states that the first contact that he's had with gangs started in 1994. He said that his father is employed as a chauffeur.

Mr. Romero-Rodriguez further stated that the tattoos that the gang members put on their bodies are a symbol of their membership. He said he wanted to go to a university. He said his wife came to the United States in 1998.

Mr. Cesar Romero-Rodriguez further stated that he's never been in any kind of a group or an organization. He said that he is a member of the Seventh Day Adventist religious sect. He has not (indiscernible) any political opinions. He has never suffered any mistreatment. He believes that the gangs would find him if he returned to Honduras.

IV. FINDINGS OF THE COURT

The Court listened carefully to the testimony of the respondent and finds that the testimony is generally consistent with his application for asylum, withholding of removal, with the

exception of a statement that he was first recruited to join a gang in 1994, a statement which he stated was in error. The Court is also somewhat concerned about the respondent stating that his intent in coming to the United States was not only to avoid the pressure of joining a gang in Honduras but also, according to his testimony, to help support his wife.

The Court is mindful of the gang problem that exist in Honduras and has reviewed the information provided both of the parties. It Honduras with young men committing robberies and other criminal appears that while the gang problem exists in activity, it also appears that vigilantism has also begun and that a number of deaths have occurred of suspected gang members. It appears that the government is making an attempt to control the gang problem as well as the vigilantism which has ensued as a result of the criminal activities by the gangs in Honduras.

In the case at hand, however, the respondent has failed to establish that he has suffered past persecution or has a well founded fear of future persecution on account of any of the five statutory grounds. The Court notes that while the respondent has been recruited on several occasions, he has never been physically harmed and furthermore that the fears expressed by the respondent do not appear to be based upon any of the five statutory grounds. The respondent stated he does not want to join a gang, he is fearful that they would pressure him to do so or harm him. However, it is well established that forced recruitment of young

males by a guerrilla organization does not constitute persecution within the meaning of the Act and similarly, in the case at hand, the attempted recruitment of the respondent does not constitute persecution on account of his race, religion, nationality, membership in a particular social group, or a political opinion. See, Matter of Vigil, 19 I&N Dec. 572 (BIA 1988).

Accordingly, the Court finds that the respondent has failed to meet his burden of proof acquired for the grant of asylum under Section 208 of the Act. the lower burden of proof required for asylum, it would also follow that he has failed to establish that it is more likely than not that his life or freedom would be threatened in Honduras on account of any of the five statutory grounds, and the Court finds that respondent has failed to meet his burden of proof required for the grant of withholding of removal under 241(b) (3) of the Act.

Finally, the Court finds that the respondent has also failed to meet his burden of proof required for the grant of withholding of removal under the Convention Against Torture. He has never been tortured and there is no reason to believe that he would be tortured by the act or acquiescence or consent of an official or person acting in an official capacity if he returned to Honduras in the future. Accordingly, the Court finds that the respondent has failed to meet the lower burden of proof required for asylum.

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V. CONCLUSIONS

Based on the above, the Court concludes that the respondent has failed to meet his burden of proof required for the grant of asylum under Section 208 of the Act, withholding of removal under Section 241(b) (3) of the Act and withholding of removal under the Convention Against Torture. The Court has designated Honduras as the country of removal for the respondent's removal, should it be required, in the alternative. He has neither requested nor demonstrated eligibility for any other form of relief from removal.

Accordingly, the following Order is hereby entered:

ORDER

IT IS HEREBY ORDERED that the respondent's application for asylum under Section 208 of the Act be denied;

IT IS FURTHER ORDERED that the respondent's application for withholding of removal to Honduras under Section 241(b) (3) of the Act be denied;

IT IS FURTHER ORDERED that the respondent's application for withholding of removal to Honduras under the Convention Against Torture be denied;

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IT IS FURTHER ORDERED that the respondent be removed from the United States to Honduras on the charge contained in the Notice to Appear.

(signed)
RONALD G. SONOM
Immigration Judge

Date: September 16, 2003